Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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No. 81-2348

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

AETNA LIFE AND CASUALTY COMPANY,

Petitioner,

—against—

MORRIS C. GURNEE,

Respondent.

STATE-WIDE INSURANCE COMPANY, *et al.*,

Petitioners,

—against—

MOSHE WEINREICH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF OF PETITIONERS IN SUPPORT OF THE PETITION

CHARLES PLATTO
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(A Partnership Including Professional Corporations)

RALPH L. HALPERN
RAICHLE, BANNING, WEISS & HALPERN

August 16, 1982

Petitioners:

Aetna Casualty & Surety Company; Aetna Insurance Company; Aetna Life Insurance Company; Allstate Insurance Company; American Automobile Insurance Company; American Mutual Liability Insurance Company; Amica Mutual Insurance Company; Atlantic Mutual Liability Insurance Company; Banner Casualty Company; Boston Old Colony Insurance Company; Centennial Insurance Company; Century Indemnity Company; Colonial Penn Insurance Company; Commercial Insurance Company of Newark, N.J.; Commercial Union Insurance Company; Continental Casualty Company; The Continental Insurance Company; Criterion Insurance Company; Eagle Insurance Company (sued as Lion Insurance Company); Employers Mutual Casualty Company; Federal Insurance Company; Fidelity and Casualty Company of New York; Fireman's Fund Insurance Company; Firemen's Insurance Company of Newark, N.J.; General Accident Insurance Company of America (sued as General Accident Fire & Life Assurance Corporation, Ltd.); Glens Falls Insurance Company; Globe Indemnity Company; Government Employees Insurance Company; Graphic Arts Mutual Insurance Company; Great American Insurance Company; Hanover Insurance Company; Hartford Accident & Indemnity Company; Hartford Casualty Insurance Company; Home Indemnity Company; Home Insurance Company; Ideal Mutual Insurance Company; Insurance Company of North America; Liberty Mutual Insurance Company; The Lumbermen's Mutual Insurance Company; Maryland Casualty Company; Merchants Mutual Insurance Company; Michigan Mutual Insurance Company (sued as Michigan Mutual Liability Company); National Grange Mutual Insurance Company; Nationwide Mutual Insurance Company; New Jersey Manufacturers Insurance Company; Newark Insurance Company; The North River Insurance Company; Prudential Property & Casualty Insurance Company; Reliance Insurance Company; Royal Insurance Company (sued as Royal-Globe Insurance Company); Royal Indemnity Company; Safeco Insurance Company of America; St. Paul Fire & Marine Insurance Company; Sentry Insurance Mutual Company; State Farm Mutual Automobile Insurance Company; State-Wide Insurance Company; Transamerica Insurance Company; Travelers Indemnity Company; Travelers Indemnity Company of Illinois; Travelers Insurance Company; Unigard Insurance Group; United States Fidelity & Guaranty Company; USAA Casualty Insurance Company; Utica Mutual Insurance Company; Wausau Underwriters Insurance Company (sued as Volkswagen Insurance Company); Western Employers Insurance Company (sued as Leatherby Insurance Company); Zurich Insurance Company.

Respondents' answer to the petition for a writ of *certiorari* and to the decision below, which requires the insurance carriers of the State of New York to retroactively pay out benefits for which they were prohibited from collecting the underlying premiums, is that the carriers should apply to the Insurance Department for an increase in their future rates to compensate them for their losses.

The Insurance Department is already on record in this action in stating that any such future rate increases would not be appropriate. (A273) Furthermore, the ultimate inequity of charging future policy holders for benefits received by past claimants who never paid for those benefits is self-evident. Most importantly, it is no answer to the constitutional injustices visited upon the carriers by the decision below to suggest, albeit erroneously, that the carriers could and should shift their losses to the general public. Rights guaranteed by the Constitution may not be circumvented in this fashion. *Cf. Carey* v. *Piphus*, 435 U.S. 247, 266 (1978).

Respectfully submitted,

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